

Amendment No. 2 to HB1403

Sargent
Signature of Sponsor

AMEND Senate Bill No. 1464*

House Bill No. 1403

by deleting all language following the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 57-4-306, is amended by deleting the section in its entirety and substituting instead the following language:

57-4-306.

(a) All gross receipt taxes collected under § 57-4-301(c) shall be distributed by the commissioner of revenue as follows:

(1) Fifty percent (50%) to the general fund to be earmarked for education purposes; and

(2) The other fifty percent (50%) to be distributed to local political subdivisions as follows:

(A) Collections for privileges exercised in an incorporated municipality shall be distributed by the commissioner to the city recorder; and

(B) Collections for privileges exercised in an unincorporated area of the county shall be distributed by the commissioner to the county trustee.

(b) From July 1, 2014, until June 30, 2015, the proceeds received by a local political subdivision pursuant to subdivision (a)(2) shall be distributed by the local political subdivision in the following manner:

(1) One-half (½) of the proceeds shall be distributed as follows:

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(A) If the county school system is the only LEA in the county, then, to the county trustee for the county school system from the collection of taxes in the county or any city exercising the privilege authorized under § 57-4-301(c);

(B) If any city exercises the privilege authorized under § 57-4-301(c) and operates a kindergarten through grade twelve (K-12) school system, then the city recorder shall retain the collections for the city school system;

(C) If a city exercises the privilege authorized under § 57-4-301(c) and operates a city school system that is not a kindergarten through grade twelve (K-12) school system, then to the city recorder:

(i) In the amount the percentage that the 2013-2014 average daily attendance (ADA) of the students in the city school system is to the 2013-2014 ADA of public school students residing in the city who attend either the city school system or the county school system with the remaining amount distributed to the county trustee for the county school system, if the city lies entirely in a single county; or

(ii) In the amount the percentage that the 2013-2014 ADA of the students in the city school system is to the 2013-2014 ADA of public school students residing in the city who attend either the

city school system or a county school system with the remaining amount divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems, if the city lies within two (2) or more counties;

(D) Notwithstanding § 49-3-315, if a city exercises the privilege authorized under § 57-4-301(c), but does not operate a city school system, then to the county trustee for the county school system;

(E) If a special school district lies, in whole or in part, within a city that exercises the privilege authorized under § 57-4-301(c), then, to the appropriate official acting for the special school district, in the amount the percentage the ADA of public school students residing in the city and attending the special school district is to the total ADA of city public school students who attend either the special school district or the county school system with any remaining amount distributed to the county trustee for the county school system;

(F) Notwithstanding § 49-3-315, if a county exercises the privilege authorized under § 57-4-301(c) and one (1) or more city school systems operate within the county, then to the county trustee for the county school system any tax revenues collected outside the boundaries of cities exercising the privilege authorized under § 57-4-301(c) that have city school systems; or

(G) If a city that lies in two (2) or more counties exercises the privilege authorized under § 57-4-301(c) but does not operate a city school system, then tax revenues collected in the city shall be divided between the counties based on where the tax was collected and distributed to the country trustees for the county school systems; and

(2) The other one-half ($\frac{1}{2}$) of the proceeds shall be distributed as follows:

(A) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(B) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(3) As used in this subsection (b), "average daily attendance" or "ADA"

means:

(A) If the school system was in operation during the 2013-2014 school year, the aggregate days' attendance of the school system during the 2013-2014 school year divided by the number of days school was in session during the 2013-2014 school year; or

(B) If the school system was not in operation during the 2013-2014 school year, then the estimated expected attendance of the school system for the 2014-2015 school year as reported to the department of education.

(c) After July 1, 2015, the proceeds received in each local political subdivision pursuant to subdivision (a)(2) shall be distributed by the local political subdivision in the following manner:

(1) One half ($\frac{1}{2}$) of the proceeds shall be expended and distributed in the same manner as the county property tax for schools is expended and distributed; any proceeds expended and distributed to municipalities which do not operate their own school systems separate from the county are required to remit one half ($\frac{1}{2}$) of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund; and

(2) The other one half ($\frac{1}{2}$) of the proceeds shall be distributed as follows:

(A) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(B) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(d) Notwithstanding subdivision (a)(2), the fifty percent (50%) of the gross receipt taxes allocated to local political subdivisions by subdivision (a)(2) and collected in a municipality which is a premier tourist resort shall be distributed to and expended by such municipality for schools in such municipality.

(e) By August 1, 2014, every city or county that exercises the privilege authorized under § 57-4-301(c) shall provide written notice to each school system operating within its jurisdiction. This notice shall contain a statement that the local political subdivision exercises the privilege authorized under § 57-4-301(c), a statement that students within the jurisdiction attend a school or schools operated by the school system, a statement that the school system is authorized to receive a portion of the revenues collected, and a reference to this part. A city or county that, subsequent to July 1, 2014, elects to exercise the privilege authorized under § 57-4-301(c), shall comply with the notice provisions of this subsection (e) within thirty (30) days of the effective date of the referendum.

(f) If the local political subdivision fails to remit the proceeds to the appropriate school fund, system, or systems as required under subsections (b) or (c) as applicable within sixty (60) days of receipt from the commissioner, then the aggrieved local school board shall notify the comptroller of the treasury who shall deliver by certified mail a written notice of such failure to the local political subdivision within five (5) business days of notice of the failure.

(g) In the event the local political subdivision fails to remit the proceeds within thirty (30) days of the receipt of such notice, the comptroller of the treasury shall direct

the commissioner to withhold future distributions of proceeds to the local political subdivision authorized under subsections (b) or (c) as applicable until a final determination is made pursuant to subsection (h).

(h) Upon the commissioner withholding distributions of proceeds as authorized under subsection (g), an aggrieved local school board shall have the authority to pursue equitable relief against the local political subdivision in the chancery court; provided, however, in the event that the state is a party or becomes a party to the suit, then such suit shall be filed or transferred to the chancery court of Davidson County. Upon receipt of a copy of the final judgment of the court, the commissioner shall distribute all withheld proceeds to the local political subdivision, which shall remit such proceeds to the aggrieved party pursuant to the judgment. If the amount of the judgment is not satisfied by the withheld proceeds, then the local political subdivision shall be solely responsible for remitting future proceeds to the aggrieved party pursuant to the judgment.

(i)

(1) Subsections (a) through (h) shall not apply in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500) according to the 2010 federal census or any subsequent federal census. In such county, all gross receipt taxes collected under § 57-4-301(c) shall be distributed by the commissioner of revenue as follows:

(A) Fifty percent (50%) to the general fund to be earmarked for education purposes; and

(B) The other fifty percent (50%) to be distributed to local political subdivisions as follows:

(i) Collections for privileges exercised in an incorporated municipality shall be distributed by the commissioner to the city recorder; and

(ii) Collections for privileges exercised in an unincorporated area of the county shall be distributed by the commissioner to the county trustee.

(2) The proceeds received in each local political subdivision pursuant to subdivision (i)(1)(B) shall be distributed by the local political subdivision in the following manner:

(A) One half ($\frac{1}{2}$) of the proceeds shall be expended and distributed in the same manner as the county property tax for schools is expended and distributed; any proceeds expended and distributed to municipalities which do not operate their own school systems separate from the county are required to remit one half ($\frac{1}{2}$) of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund; and

(B) The other one half ($\frac{1}{2}$) of the proceeds shall be distributed as follows:

(i) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(ii) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

SECTION 2. Tennessee Code Annotated, Section 49-2-203, is amended by adding the following as a new subsection:

(d)

(1)

(A) Notwithstanding any law to the contrary, the local boards of education, the municipal legislative bodies, and the county legislative body are authorized to negotiate and enter into a binding agreement that addresses the municipality's or county's responsibility to remit certain gross receipt taxes owed by the municipality or county, under § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014, if:

(i) At any time prior to entering the binding agreement authorized in subdivision (d)(1)(A), a municipality or county has received from the commissioner of revenue gross receipt taxes collected by the department under § 57-4-301(c) and as authorized by § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014; and

(ii) Thereafter the municipality or county, acting in good faith did not remit the proceeds to the appropriate school fund, system, or systems as required by § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014.

(B) Such agreement, in determining the municipality's or county's responsibility to remit certain gross receipt taxes owed by the municipality or county, under § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014, may permit the municipality or county to offset its liability in whole or in part by past, present or future appropriations, expenditures, allocation of revenue, gifts, capital projects or other similar payments, grants, or any consideration made by the municipality or county to the school system, on behalf of the school system, or otherwise directly benefitting the school system.

(2) Such agreement shall be entered into and approved no later than August 31, 2014, and shall be the final understanding of the obligations between the parties and shall not be subject to additional requests or demands. A copy of this agreement shall be filed with the comptroller of the treasury and the commissioner of revenue. If any party defaults, then the aggrieved party shall notify the comptroller of the default. The comptroller shall deliver by certified mail a written notice of such default to the defaulting party within five (5) business days of receiving the notice. In the event the defaulting party fails to cure the default within sixty (60) days of the receipt of such notice, the comptroller shall direct the commissioner to withhold future distributions of proceeds authorized under § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014, to the defaulting party. Upon the commissioner's withholding of the proceeds, an aggrieved party shall have the authority to pursue equitable relief against the defaulting party in the chancery court of Davidson County. Upon receipt of a copy of the final judgment of the court, the commissioner shall distribute all withheld proceeds to the defaulting party, which shall remit such proceeds to the aggrieved party pursuant to the judgment. If the amount of the judgment is not satisfied by the withheld proceeds, the defaulting party shall be solely responsible for remitting future proceeds to the aggrieved party pursuant to the judgment.

(3)

(A) If by September 1, 2014, the local boards of education, the municipal legislative bodies, and the county legislative body fail to enter into a binding agreement as authorized under subdivision (d)(1)(A), then any party may:

(i) Seek equitable relief in the chancery court of Davidson County; or

(ii) Request the comptroller to undertake binding arbitration to resolve any disagreements. The comptroller shall select the arbitrator.

(B) Such equitable relief shall be limited to those proceeds received by the local political subdivision pursuant to § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014, and not remitted to the proper fund, system or systems as required by § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014, from July 1, 1999, to June 30, 2014. The amount owed the appropriate school fund, system, or systems may be paid in equal installments, but not to exceed ten (10) years.

(C) All costs incurred by the comptroller of the treasury and the department of revenue under this subdivision (d)(3) shall be born equally by the parties.

(D) In the event a party fails to pursue the remedies available pursuant to subdivision (d)(3)(A)(i) or (d)(3)(A)(ii) by December 31, 2014, then the party shall be barred from any other relief for proceeds received by a local political subdivision prior to July 1, 2014.

(4) As the historical records of the comptroller of the treasury and the department of revenue permit, the comptroller of the treasury is authorized to provide to the local boards of education, the municipal legislative bodies, and the county legislative body the amount of the proceeds distributed to the local political subdivisions by the department under § 57-4-306(a)(2), as such subdivision existed prior to July 1, 2014.

(5) This subsection (d) shall not apply to any action, case, or proceeding commenced prior to June 1, 2014.

(6) Any agreement to address a municipality's or county's responsibility to remit certain gross receipt taxes owed by the municipality or county under § 57-4-306(a)(2) entered into prior to the effective date of SECTION 2 of this act is hereby ratified and this subsection (d) shall not apply to such agreements.

(7) This subsection (d) shall not apply in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500) according to the 2010 federal census or any subsequent federal census.

SECTION 3. Tennessee Code Annotated, Section 9-4-5301(5), is amended by deleting the language "apportioned by § 57-4-306(2)(B)" and substituting instead the language "apportioned by § 57-4-306".

SECTION 4. If any provision of this act or the application of any provision of this act to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 5. Section 1 of this act shall take effect July 1, 2014, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.